IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1104

MORRIS KENNETH SAGRACY - - Petitioner

versus

UNITED STATES OF AMERICA - Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FRANK E. HADDAD, JR.
529 Kentucky Home Life Building
Louisville, Kentucky 40202
Counsel for Petitioner

February 7, 1977

WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

INDEX

AUTHORITIES

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No. _____

MORRIS KENNETH SAGRACY - - - *Petitioner*

v.

UNITED STATES OF AMERICA - - *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner, MORRIS KENNETH SAGRACY, respectfully prays that a Writ of Certiorari issue to review the Order and opinion of the United States Court of Appeals for the Sixth Circuit, entered in this proceeding on December 15, 1976.

OPINIONS BELOW

The Order and opinion of the Court of Appeals, entered on December 15, 1976 (Appendix A) is reported at ____ F. 2d ____. The Order of the Court of Appeals overruling Petitioner's Petition for Rehearing was entered on January 13, 1977 (Appendix B).

The Judgment and Commitment Order of the District Court for the Western District of Kentucky at Louisville (Appendix C), entered on March 26, 1976, is not reported.

JURISDICTION

The Order of the Court of Appeals for the Sixth Circuit (Appendix A) was entered on December 15, 1976; and a timely Petition for Rehearing was denied by Order of the Court of Appeals for the Sixth Circuit (Appendix B) on January 13, 1977. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the admission into evidence of a Government expert's technical examination which had not been disclosed prior to trial pursuant to defense motion for discovery, which surprised the defense when admitted at trial over objection, should not have been allowed and constituted unfair "trial by ambush."

2. Whether hearsay evidence pursuant to the co-conspirator exception should not have been admitted over objection where the existence of a conspiracy had not been established and where Petitioner was never connected with any conspiracy, in derogation of Petitioner's right to be tried by competent evidence.

3. Whether the prosecution's improper introduction of evidence as to an unrelated offense which was not cured by the trial court's insufficient admonition denied Petitioner a fair opportunity to defend against the single offense charged.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part as follows:

> No person shall be . . . deprived of life, liberty, or property, without due process of law.

The charging statute in this criminal proceeding is 18 U.S.C. §1952, dealing with interstate travel or transportation in aid of racketeering enterprises, which is reproduced in pertinent part as follows:

> (a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
>
> (1) distribute the proceeds of any unlawful activity; or
>
> (2) commit any crime of violence to further any unlawful activity; or
>
> (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,
>
> and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
>
> (b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or controlled substances (as defined in section 102(6) of the Con-

trolled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

STATEMENT OF THE CASE

This is a prosecution under 18 U.S.C. §1952. This case was tried before a jury in the United States District Court for the Western District of Kentucky in March, 1976.

A one-count Indictment filed on January 12, 1976, charged that Petitioner had participated in interstate travel to violate an Indiana statute prohibiting arson. The Indictment purported to allege that a truck and cargo had been burned for the insurance. Petitioner pleaded not guilty. Trial commenced on March 16, 1976 and lasted for several days, resulting in Petitioner's conviction.

Petitioner appealed the conviction to the Court of Appeals for the Sixth Circuit. On appeal, the three errors which form the basis of this Petition for Writ of Certiorari were raised. These errors involve pretrial disclosure of technical evidence, hearsay evidence admitted pursuant to the co-conspirator's exception, and the introduction of evidence of an unrelated offense.

The Order and opinion of the Court of Appeals affirming Petitioner's conviction is not lengthy (Appendix A). A timely Petition for Rehearing was filed which the Court of Appeals denied (Appendix B).

Petitioner filed a Motion for Stay of Mandate Pending Certiorari, but this motion for stay was denied by indorsement on the Motion by Judge Weick of the Court of Appeals on January 24, 1977. Upon notice of this denial, Petitioner applied to this Court's Justice Potter Stewart to stay the execution of sentence pending certiorari.

REASONS FOR GRANTING THIS WRIT

1. The conviction below was unfairly obtained and should be reversed.

2. This Court now has the opportunity to clarify the three important evidentiary questions raised by this Petition.

3. The facts and the law of the present case require reversal.

A. The trial court prejudicially erred in admitting, over Petitioner's objection, evidence of a Government expert's technical examination wihch had not been disclosed prior to trial pursuant to defense motion for discovery, which evidence constituted prejudicial surprise when admitted at trial.

Prior to trial, Petitioner filed a comprehensive motion for pre-trial discovery, inspection and production which requested among other things, pre-trial discovery of:

> 5. The results and laboratory reports of any and all scientific tests made in connection with this

case, including but not limited to arson investigations and/or fingerprints, which are within the possession, custody, or control of the Government.

22. If, prior to or during trial, the United States discovers additional evidence or material herein requested, it is hereby requested that the United States shall promptly notify the Defendant of the existence of the additional evidence or material. [Request for Discovery, filed January 26, 1976.]

Petitioner requested the aforementioned items pursuant to the Federal Rules of Criminal Procedure, Rules 16(a)(1)(D) and 16(c).

The Government responded on the point here raised as follows:

5. The Government will disclose to the defendant any results or reports of scientific tests or experiments, which are within the custody, or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Government, and which are material to the preparation of the defense or are intended for use by the Government as evidence in chief at the trial. Rule 16(a)(1)(D).

22. The Government is aware of Rule 16(c), and will meet its obligations in that regard. [Government's Reponse to Request for Discovery, filed February 24, 1976.]

The trial court reified the Government's duty of pretrial disclosure by an order containing the following language:

This Court having found that the discovery voluntarily agreed to by the Government satisfies the requirements of Rule 16, Federal Rules of Criminal Procedure;

Now, therefore, *except as to the defendant's requests for discovery with which the Government has agreed to comply,* the defendant's said request for discovery, inspection and production is hereby DENIED. [Emphasis added.] [Discovery Order, filed March 16, 1976.]

Thus, the Government had a duty to disclose the results of any tests or experiments material to defense preparation or to be used in the prosecution's case in chief. This duty was ignored prior to trial and at trial when the Government introduced evidence in chief by a specialist on truck brakes regarding examinations of the burned truck's brakes.

When the prosecution began to qualify the witness Taylor as a heavy equipment expert, opposing counsel conferred briefly and then approached the bench. At the bench, the defense objected to introduction of the results of the expert's examination of the burned truck's brakes.

At this point, the question was squarely before the trial court: whether the results of a technical examination which had not been disclosed to defense counsel prior to trial as ordered could be introduced at trial over objection, to the surprise of defense counsel. The trial court ruled the results of the expert witness' examination admissible.

Throughout twenty pages of trial transcript, the expert witness testified regarding his examination of

the truck's brakes. During this testimony, the witness offered into evidence numerous photographs which also had *not* been disclosed to the defense prior to trial.

Defense counsel articulated his surprise.

> I want the Court to know that this is the first instance that we've had any knowledge that this witness was going to so testify. . . . I'm saying to you that we are saying that we are surprised by this fact of this witness going to testify to that because we haven't been supplied any discovery information that was requested. . . . I may have wanted to get a brake expert in here on this guy, against this guy. [Transcript of Evidence, hereinafter referred to as T.E., Vol. II, pp. 147-149.]

Indeed, the defense *was* surprised by this hitherto undisclosed expert evidence, and the defense had no opportunity to meet it.

On appeal, the Court of Appeals briefly brushed aside this claim of error as not meriting discussion (Appendix A).

However, this Court has condemned "poker game" secrecy on the part of the Government.

> The State may not insist that trials be run as a "search for truth" so far as defense witnesses are concerned, while maintaining "poker game" secrecy for its own witnesses. *Wardius* v. *Oregon,* 412 U. S. 470, 475 (1973).

The United States Court of Appeals for the Second Circuit has twice decided cases in which, as in the case

at bar, the trial court was confronted with the hard choice of interrupting the trial to allow defense discovery and preparation or denying to the defense a reasonable opportunity to discover the substantial impact of evidence which should have been disclosed prior to trial.

The Second Circuit twice decided to resolve the issue in favor of discovery.

> [W]e would rather give the defendant the benefit of the doubt than let the Government reap even a slight possibility of benefit from what we regard as a lack of candor unworthy of a prosecutor. *United States* v. *Baum,* 482 F. 2d 1325, 1332 (2nd Cir. 1973).

The Second Circuit expanded its reasoning that trial by ambush with expert witnesses is an unfair tactic.

> [F]airness requires that adequate notice be given the defense to check the findings and conclusions of the government's experts. . . . [T]he failure to disclose the tests well in advance of trial faced the trial judge with an impossible choice, to sanction a month's interruption of a jury trial or deprive the defense of a fair opportunity to meet this part of the government's evidence.
>
> * * *
>
> The course of the government smacks too much of a trial by ambush, in violation of the spirit of the rules. A new trial is required with a fair opportunity for the defense to run its own . . . tests. *United States* v. *Kelly,* 420 F. 2d 26, 29 (2nd Cir. 1969).

In the present proceeding, the introduction of substantial expert evidence which had not been the subject of pre-trial discovery prejudicially deprived Petitioner of a fair opportunity to meet the prosecution's case in chief.

In light of this Court's holding in *Wardius* v. *Oregon, supra,* it is respectfully submitted that the Second Circuit's reasoning in *Baum, supra,* and *Kelly, supra,* should be applied in the present case so that Petitioner's unfair conviction below may be reversed.

B. The trial court prejudicially erred in admitting, over Petitioner's objection, hearsay evidence pursuant to the co-conspirator exception to the hearsay rule where the existence of a conspiracy had not been established and where Petitioner was never connected with any conspiracy.

During the testimony of the prosecution witnesses Ancil and Froman, much hearsay testimony was presented to the jury.

The prosecution witness Terry Ancil testified, and much of his testimony concerned the hearsay conversation of one deceased Damon Keeton. The witness Ancil testified as to the deceased Keeton's conversation.

> Well, he told me I would never receive the merchandise. And I asked him what he was going —what was going to happen, and they said they was going to burn it. [T.E., Vol. II, p. 43.]
>
> * * *
>
> He just said there was going to be a fire. He never said about, you know, nothing else. [T.E., Vol. II, p. 56.]

In all, the prosecution witness Ancil's testimony covered twenty-seven (27) pages of trial transcript. Ancil's testimony regarding the deceased Keeton's conversation covers nine (9) pages of the trial transcript [T.E., Vol. II, pp. 41-45, 55-58], an excerpt of which is quoted above. The testimony in the nine pages of trial transcript was unreliable hearsay not subject to confrontation, prejudicial to Petitioner, and should not have been presented to the jury.

Such unreliable evidence tended to show some sort of plan or conspiracy between the witness Ancil and the deceased Keeton. Because only Petitioner was on trial, the jury may have improperly connected Petitioner with such a plan or conspiracy.

In fact, Petitioner definitely was *not* connected with the alleged conversation attributed to the deceased Keeton. The witness Ancil testified:

> Q. All right. Now so there won't be any mistake about it, you don't know Kenneth Sagracy, this man sitting here at the table, do you?
>
> A. No, sir.
>
> Q. He wasn't with these people that day?
>
> A. No, sir.
>
> Q. You've never had any dealings or any contact with him at all?
>
> A. No, sir.
>
> Q. Or any conversation?
>
> A. No, sir. [T.E., Vol. II, pp. 54-55.]

After the prosecution witness Ancil testified, Petitioner's same objection to hearsay was overruled regarding the testimony of the prosecution witness

Charles Froman, who was also expected to testify as to the deceased Keeton's conversations. In fourteen (14) trial transcript pages, the witness Froman's testimony indicated that Keeton and Ancil had conspired to burn a truck cargo for the insurance. [T.E., Vol. II, pp. 66-79.]

Again, Petitioner definitely was *not* connected with the alleged conversations attributed to Keeton.

> Q. All right. Now, so there will be no misunderstanding about it, you at no time saw Kenneth Sagracy anywhere around, did you?
> A. No, sir.
> Q. You don't even know him, do you?
> A. No.
> Q. You never had any discussions or conversations or anything with him, did you?
> A. No. [T.E., Vol. II, p. 76.]

Thus, much hearsay evidence regarding conversations of the deceased Keeton was erroneously introduced at trial where 1) no conspiracy had been proven and 2) Petitioner definitely was not connected with any conspiracy. No co-conspirator exception to the hearsay exclusion was justified.

The co-conspirator exception to the hearsay rule does not apply unless independent evidence establishes *prima facie* an illegal joint venture or conspiracy.

> Declarations by one defendant may also be admissible against other defendants upon a sufficient showing, by independent evidence, of a conspiracy among one or more other defendants and the declarant and if the declarations at issue were in furtherance of that conspiracy. The same is true of declarations of coconspirators who are not defendants in the case on trial. *United States* v. *Nixon,* 418 U. S. 683, 701 (1974).

In the present case, no such "independent evidence of a conspiracy" involving the Petitioner had been offered as a requisite basis for the hearsay evidence elicited during the testimony of prosecution witnesses Ancil and Froman.

Also, the co-conspirator exception to the hearsay rule does not apply unless a defendant is connected by independent evidence with a demonstrated conspiracy.

> Under the co-conspirator exception to the hearsay rule, accounts of extrajudicial statements may be admitted if it is established by evidence other than hearsay that the defendant was involved in a criminal conspiracy with the declarant. . . . [Numerous citations omitted.] *United States* v. *Craig,* 522 F. 2d 29, 31 (6th Cir. 1975).

If a defendant is not connected with a demonstrated conspiracy, then the danger of conviction based on untrustworthy evidence increases. As this Court has warned, absent independent evidence that a defendant is connected with the conspiracy,

> hearsay would lift itself by its own boot straps to the level of competent evidence. *Glasser* v. *United States,* 315 U. S. 59, 74-75 (1942).

In the present case, no independent evidence connecting Petitioner with an alleged conspiracy was ever

introduced at any time, so that a requisite basis was never established to justify the introduction of the hearsay evidence elicited during the testimony of prosecution witnesses Ancil and Froman.

On appeal, the Court of Appeals ruled that the conspiracy alleged had been established by independent evidence and that whether the conspiracy was established by independent evidence prior to *or* subsequent to the admission of hearsay declarations was "within the sound discretion of the trial judge."

> We find no error in the admission of testimony of a co-conspirator. It was not necessary to establish the conspiracy before admission of such testimony; but the conspiracy had to be established by independent evidence at the trial. We are of the opinion that there was ample proof of conspiracy. *United States* v. *Craig,* 522 F. 2d 29, 31 (6th Cir. 1975). (Appendix A.)
>
> The order of proof in a conspiracy case is within the sound discretion of the trial judge. *United States* v. *Harris,* 391 F. 2d 348, 350 (6th Cir.), *cert. denied,* 393 U. S. 874 (1968). (Appendix A.)

However, the Court of Appeals did not refer in its opinion to the failure of the trial court to require independent evidence connecting Petitioner to any conspiracy.

In this Petition for Certiorari, Petitioner submits that the trial court's failure to require independent evidence of a conspiracy prior to introducing hearsay declarations and to require independent evidence connecting Petitioner to the alleged conspiracy at any time as a basis for introducing hearsay declarations amounted to prejudicial error. The result was Petitioner's unfair conviction based in significant part upon untrustworthy evidence.

C. The trial court prejudicially erred in denying Petitioner's motion for mistrial where the prosecution improperly referred to an unrelated offense and the trial court's admonition was insufficient to alleviate the unfair and prejudicial effects of the prosecution's reference.

As a general rule, evidence of the commission of other crimes is incompetent and inadmissible for the purpose of showing the commission of the crime charged. *Johnson* v. *United States,* 318 U. S. 189, 195 (1943); *United States* v. *Gebhart,* 441 F. 2d 1261, 1264 (6th Cir. 1971).

> This rule is based on the common-sense proposition that such evidence draws the attention of the jury away from the real issues and injects an additional and confusing burden upon the defense. *Johnson* v. *United States,* 356 F. 2d 680, 684 (8th Cir. 1966), *Cert. denied,* 385 U. S. 857.

The trial below involved the alleged arson by Petitioner of a truckload of goods. During the testimony of defense witness Reynolds regarding the purchase of a subsequent and wholly unrelated truckload of goods, the prosecution generated the following colloquy:

> Q. And what happened to those scarves? Did they ever reach you?

A. They never got to me.
Q. What happened to them?
A. They just never reached me.
Q. Well, isn't it true that they burned up in a truck in Lafayette, Indiana? [T.E., Vol. IV, p. 123.]

Petitioner's counsel quickly objected to the prosecution's attempt to draw the jury's attention away from the issue at trial.

The prosecution, still in the presence of the jury, continued to improperly prejudice Petitioner's defense.

> Mr. Pope: Your Honor, I think that this fits into the overall theory. . . . [T.E., Vol. IV, p. 123.]

The problem with evidence as to an overall theory of multiple crimes is that Petitioner was only charged with a single crime. A conference at the bench took place after which the trial court ambiguously admonished the jury as follows:

> Now, ladies and gentlemen, you will disregard entirely from your mind—don't consider it any further—any reference or comments or statements affecting an entirely independent transaction *involving the same type or a portion of the same type of merchandise by this defendant at a later date.* It has nothing to do with this transaction that we have on trial here, so you will disregard that from your mind. [Emphasis added.] [T.E., Vol. IV, p. 125.]

Petitioner respectfully submits that this admonition failed to separate the unrelated evidence from the issue on trial. The words, "transaction involving the same type or a portion of the same type of merchandise by this defendant at a later date," unnecessarily appear in the admonition and prejudicially tend to link the unrelated incident to Petitioner and the offense on trial attributed to Petitioner.

The prosecution's improper injection into evidence of the commission of an unrelated crime and the trial court's ineffective admonition caused the defense to move for a mistrial. Mistrial was denied.

This Court has recognized that the prosecution may not introduce evidence of specific criminal acts not related to the issue at trial. Such evidence, this Court has reasoned,

> is said to weigh too much with the jury and to so overpersuade them as to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge. *Michelson* v. *United States,* 335 U. S. 469, 475-476 (1948).

In the leading case of *Berger* v. *United States,* 295 U. S. 78 (1935), this Court first articulated the widely accepted standard,

> The United States Attorney . . . may strike hard blows, [but] he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. *Berger* v. *United States, supra,* 295 U. S. at 88.

The record at bar shows that the prosecution improperly introduced into evidence another offense unrelated to the charge at trial and the idea of an "overall theory" of multiple acts. The record at bar also shows the trial court's ineffective admonition which tended more to connect Petitioner with the unrelated offense and "overall theory" than to divorce Petitioner from the objectionable evidence.

On appeal, the Court of Appeals ruled that the prosecution's cross-examination of the witness Reynolds as to an unrelated offense was "improper," but was not prejudicial for two reasons. It was not prejudicial because of the trial court's curative instruction, and it was in any event "harmless beyond a reasonable doubt because of the overwhelming evidence of defendant's guilt." (Appendix A.)

However, Petitioner believes the Court of Appeals has failed to correctly gauge the impact of this error which was prejudicially fatal to the defense. Because the trial court's admonition was insufficient to alleviate the unfair and prejudicial effects of the prosecutor's improper evidence, it is respectfully submitted that reversible error occurred so that a writ of certiorari should issue to review the proceedings below.

CONCLUSION

The decision of the Court of Appeals failed to accurately gauge the prejudicial impact of the evidentiary errors set forth on appeal and in this Petition. The effect of these errors was to convict Petitioner by surprise, by hearsay evidence, and by irrelevant evidence. In each instance, Petitioner's defense against the alleged charge was prejudicially obstructed. The denial of Petitioner's right to defend against the alleged charge and to be tried on competent, relevant evidence was fundamental injustice, amounting to a denial of Petitioner's Fifth Amendment right to due process of law. Only this Court remains to correct that fundamental injustice. The present Petition for Writ of Certiorari should therefore be granted.

Respectfully submitted,

FRANK E. HADDAD, JR.
529 Kentucky Home Life Building
Louisville, Kentucky 40202
Counsel for Petitioner

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 76-1867

UNITED STATES OF AMERICA, - - *Plaintiff-Appellee*

v.

MORRIS KENNETH SAGRACY, - *Defendant-Appellant*

ORDER—Filed December 15, 1976

Before WEICK, EDWARDS and PECK, Circuit Judges.

This is a direct appeal from a jury conviction for interstate travel to commit arson, in violation of 18 U.S.C. § 1952.

Upon consideration of the various claims of error we are of the opinion that the District Court did not abuse its discretion in denying the motion for a bill of particulars.

We find no error in the admission of testimony of a co-conspirator. It was not necessary to establish the conspiracy before admission of such testimony; but the conspiracy had to be established by independent evidence at the trial. We are of the opinion that there was ample proof of conspiracy. *United States* v. *Craig*, 522 F. 2d 29, 31 (6th Cir. 1975).

The order of proof in a conspiracy case is within the sound discretion of the trial judge. *United States* v. *Harris*, 391 F. 2d 348, 350 (6th Cir.), *cert. denied*, 393 U. S. 874 (1968).

Prosecutorial misconduct is claimed in asking a question on cross-examination of the defense witness Reynolds, as to an unrelated offense committed by him. Objection to this question was sustained by the Court which gave a curative instruction. In our opinion the question, while improper, was not prejudicial, because of the curative instruction. In any event the error was harmless beyond a reasonable doubt because of the overwhelming evidence of defendant's guilt.

Other claims of error have been considered but do not merit discussion.

The judgment of the District Court is affirmed.

Entered by Order of the Court.
(s) John P. Hehman, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 76-1867

UNITED STATES OF AMERICA, - - *Plaintiff-Appellee*

v.

MORRIS KENNETH SAGRACY, - *Defendant-Appellant*

ORDER—Filed January 13, 1977

Before WEICK, EDWARDS and PECK, Circuit Judges.

Upon consideration, we are of the opinion that the petition for rehearing is not well taken and it is hereby denied.

Entered by Order of the Court.
(s) John P. Hehman, Clerk

United States of America vs. **United States District Court** for

DEFENDANT: _____ WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE

MORRIS KENNETH SAGRACY — DOCKET NO. CR-76-0015-L

JUDGMENT AND PROBATION/COMMITMENT ORDER AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — WILLIAM POPE

MONTH	DAY	YEAR
3	22	76

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL FRANK E. HADDAD, JR., Employed (Name of counsel)

PLEA

[X] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY BY A JURY

Defendant has been convicted as charged of the offense(s) of

traveling in Interstate Commerce with the intent to promote unlawful activity (arson) in violation of the laws of Indiana and in violation of Title 18, Sections 2 and 1952, United States Code, as charged in the one count of the Indictment.

PRESENTENCE REPORT WAS REVIEWED BY THE COURT.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

THREE (3) YEARS as to the single count of the Indictment.

SPECIAL CONDITIONS OF PROBATION

UPON MOTION OF THE DEFENDANT, BY COUNSEL, AND THE UNITED STATES HAVING OBJECTED THERETO, IT IS ORDERED AND ADJUDGED that the appearance bond executed herein by the defendant be converted to an appeal bond pending final determination by the appeal Court in this case. The defendant shall continue under the same terms and conditions as previously set forth.

APPENDIX C

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

ENTERED

MAR 26 1976

AUGUSTUS R. HEHMELER, JR., CLERK

BY _____ DEPUTY CLERK

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

RHODES BRATCHER

Date March 22, 1976